

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Respectfully submitted,

Dated: November 29, 2022

/s/ Matthew H. Haverstick

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Attorney for Miele Manufacturing, Inc.

Defendants.

No. 2:22-cv-04434-MMB

On April 7, 2022, Plaintiff Greenwood Gaming & Entertainment, Inc., d/b/a Parx Casino (hereafter, “Parx”) filed a praecipe to issue writ of summons in the Philadelphia County Court of Common Pleas. On the same day, the Court of Common Pleas issued a writ of summons against the POM Defendants and Miele. On August 8, 2022, the Court of Common Pleas issued a show-cause order, which, among other things, directed Parx to show cause at a hearing why the matter should not be dismissed for failure to file a complaint; however, the order also

permitted Parx to file a complaint on or before October 10, 2022 to avoid the need for the show cause hearing.

On October 7, 2022, Parx filed a complaint against the POM Defendants and Miele and served it on the same day. In the complaint, Parx pled four counts related to the Pennsylvania Skill Game that Defendants design, manufacture, and sell. Parx pled the following counts: (1) violation of the Lanham Act, 15 U.S.C. § 1125(a)(1); (2) common law unfair competition; (3) tortious interference with business relations; and (4) negligence per se. In general, Parx alleged Defendants unlawfully compete with Parx, a casino, through the manufacture, sale, and leasing of certain games (“Pennsylvania Skill Games”) that Parx alleges are unlawful slot machines (these allegations are strenuously denied by the POM Defendants). The crux of Parx’s claims in the first Complaint were that POM Defendants and Miele falsely advertised their Pennsylvania Skill Games as legal games of skill and that the Pennsylvania Skill Games compete with the gambling Parx offers to the public through its licensed in-person and online gambling devices. Compl. ¶¶ 97, 107, 125, 137, 152.

On November 4, 2022, POM Defendants removed the pending Court of Common Pleas action to this Court. (Doc. 1.) Thereafter, POM Defendants filed on November 11, 2022, a Motion to Dismiss for failure to state a claim on the basis that Parx: (1) failed to state a Lanham Act claim because it did not plead proximate cause; (2) could not state a claim for unfair competition for the same lack of proximate cause; (3) could not state a tortious interference claim for failure to plead

a non-speculative theory of causation; and (4) failed to state a claim for negligence or negligence per se. (Doc. 11.) On November 14, 2022, Miele also filed a motion to dismiss for failure to state a claim. (Doc. 11.)

In response to the pending motions to dismiss, Parx filed an amended complaint on November 21, 2022. (Doc. 13.) Primarily, Parx amended to now allege a new leading cause of action: a violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”). *See* Am. Compl. ¶¶ 133-159. Parx further abandoned its negligence per se claim from its first complaint. The remaining three counts for false advertising, unfair competition, and tortious interference are substantially similar to the first complaint. *See* Am. Compl. ¶¶ 160-208. Defendants’ responsive pleading to the Amended Complaint is currently due on December 5, 2022.

II. ARGUMENT

By adding a new cause of action in its Amended Complaint, Parx drastically changes the factual and legal basis for its claims against Defendants from the original complaint it filed in the Court of Common Pleas. Accordingly, Defendants seek a thirty-day extension of time in which to file a responsive pleading to Parx’s Amended Complaint.

This Court may, “for good cause, extend the time” for filing pleadings. Fed. R. Civ. P. 6(b)(1). Specifically, for good cause, the Court may provide an extension of time “with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires.” Fed. R. Civ. P. 6(b)(1)(B). The decision to grant an extension of time under Rule 6 is within the district court’s

discretion. *See Planned Parenthood of Cent. New Jersey v. Atty. General of the State of New Jersey*, 297 F.3d 253, 261 (3d Cir. 2002); *Orange Theatre Corp. v. Rayherts Amusement Corp.*, 139 F.2d 871, 872 (3d Cir. 1944). Because Parx's Amended Complaint contains an entirely new cause of action and is materially different from its first complaint, there is good cause for this Court to exercise its discretion and grant Defendants a brief extension of time to file a responsive pleading.

Parx did not make minor changes to its claims when it amended the complaint; instead, it asserts an entirely new cause of action and new facts to support it. This amendment does not solely address the arguments made in Defendants' Motions to Dismiss, but changes the focal point of the action. In support of its new leading RICO claim, Parx materially changed and expanded the factual averments underlying its claims, setting forth extensive factual averments about the business model between POM Defendants, Miele, and others. *Compare* Compl. ¶¶ 20-97, *with* Am. Compl. ¶¶ 20-132. The new averments include serious allegations about criminal conduct, including money laundering and tax-related offenses. *See* Am. Compl. ¶¶ 124-132. Along with the new factual averments, Parx's new RICO claim adds 23 new paragraphs of detailed legal conclusions about alleged criminal actions. Am. Compl. ¶¶ 133-159. Therefore, the Amended Complaint is markedly different than the false advertising claims that were the crux of the prior complaint.

Because the new RICO allegations in the Amended Complaint are numerous, serious, and substantively different from the claims set forth in Parx's first

complaint, there is good cause for this Court to exercise its discretion for an extension. In order to properly assess the new allegations Parx sets forth, Defendants request a thirty-day extension to prepare and file a responsive pleading that adequately addresses these serious new allegations.

Defendants sought Parx's concurrence and/or consent in this requested extension on November 23, 2022. As of the date of this filing, Parx has still not responded to this request.

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court grant the Motion for Extension of Time to Respond to Plaintiff's Amended Complaint and enter an order directing that Defendants' responsive pleading is due on January 4, 2023.

Respectfully submitted,

Dated: November 29, 2022

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the Motion for Extension of Time to be served on all counsel of record via this Court's ECF system.

Dated: November 29, 2022

/s/ Matthew H. Haverstick